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No. 229

In the Supreme Court of the United States

OCTOBER TERM, 1946

ROBERT P. PATTERSON, SECRETARY OF WAR, AND EDWARD F. WITSELL, THE ADJUTANT GENERAL, UNITED STATES ARMY, PETITIONERS

v.

JAMES JOHN LAMB

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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The Solicitor General on behalf of Robert P. Patterson, Secretary of War, and Edward F. Witsell, The Adjutant General, United States Army, prays that a writ of certiorari issue to review the judgment entered in this case on March 25, 1946, by the United States Court of Appeals for the District of Columbia.

OPINION BELOW

The district court did not render an opinion. The opinion of the Court of Appeals (R. 22–28) is reported at 154 F. 2d 319.

JURISDICTION

The judgment of the Court of Appeals was entered on March 25, 1946 (R. 29). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a court may, by mandamus, order the Secretary of War to issue an "Honorable Discharge from the Army" to an individual who received a "Discharge from Draft" in 1918, over 25 years prior to the institution of suit, where such individual simply reported for induction on November 11, 1918, returned to his home on that day because of the cancellation of all draft calls by order of the President, never entrained for travel to a military camp, never wore the uniform, and never was accepted for military service by the Army.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statute and regulations involved are set out in the Appendix, *infra*, pp. 20–25.

STATEMENT

Pursuant to the provisions of Section 2 of the Selective Draft Act of 1917 (c. 15, 40 Stat. 76, 77–78) and regulations promulgated thereunder, respondent James John Lamb was ordered by the local draft board at Davenport, Iowa, to report

for military duty at 9:00 A. M. on November 11, 1918 (R. 2–3). The order recited that "From and after the day and hour just named you will be a soldier in the military service of the United States" (R. 13). He reported at the time and place fixed in the order and was appointed leader of a contingent of drafted men who were to travel to Camp Dodge (R. 3–4). Before actually entraining for camp, however, he was orally notified by the local board that he should not entrain because of cancellation of all calls for induction and mobilization (R. 4–5). The cancellation had been made by order of the Provost Marshal General under instructions of the President, the contents of the order being communicated to all State draft executives by telegram on November 11, 1918 (R. 16). On November 15, 1918, respondent was notified in writing by his local board of the cancellation order and was advised that "such cancellation in cases of registrants who were inducted has the effect of an honorable discharge from the army" (R. 5, 15). On January 26, 1919, respondent received a certificate entitled "Discharge From Draft" on Form 638–1, A. G. O., dated November 14, 1918 (R. 5–6, 17).[1]

[1] We point out below, pp. 11–12, that Form 638–1 was adapted from Form 638 (Appendix, *infra*, p. 21), which was used for the discharge of men rejected at the mobilization camps for various reasons. The use of Form 638 was authorized by War Department Circular No. 651 of January 12, 1918 (Appendix, *infra*, pp. 21–22).

For a number of years prior to 1940, respondent claimed and received under the tax statutes of Iowa a $500 exemption, applicable to the property of "any honorably discharged soldier." In 1941, the State authorities denied him the exemption, a denial which was upheld by the Iowa Supreme Court. *Lamb* v. *Kroeger*, 233 Iowa 730, decided March 9, 1943, rehearing denied, June 18, 1943. The court relied in part on an opinion of the Attorney General of Iowa, rendered in 1922, to the effect that persons holding Discharges from Draft were not within the exemption statute, but decided the case purely as a matter of state law, saying (233 Iowa at 734): "We are here concerned with what the Iowa Legislature, not draft-law administrators, or United States Government officials, meant by the term 'honorably discharged soldier * * * of the war with Germany.'"

Thereafter, respondent applied to The Adjutant General, United States Army, for a certificate of Honorable Discharge, and, upon denial of the application, brought this suit in the District Court of the United States for the District of Columbia against the then Secretary of War and the then Adjutant General,[2] seeking a declaratory judgment that respondent was entitled to a certificate of Honorable Discharge, and seeking also a mandatory injunction directing the petitioners to

[2] The present petitioners, successors in office, were duly substituted in the court below (R. 29–30).

issue such a certificate. The case was heard on an amended complaint (R. 2–19)—filed on October 28, 1944, nearly 26 years after respondent's release from military service—and a motion to dismiss (R. 19–20). The motion was sustained by the district court, which ordered the complaint dismissed (R. 20).

On appeal, the court below reversed, holding that respondent was entitled to an Honorable Discharge by virtue of Paragraph 150 of the Army Regulations then in force (R. 25–26; Appendix, *infra*, pp. 20–21). The court held that Discharges for Draft, issued under Circular No. 651 of January 12, 1918 (*infra*, pp. 21–22), were appropriate only for men rejected at the mobilization rendezvous;[3] that Form 638–1, discharging men by reason of the President's order of November 11, 1918, suspending further draft calls, was first "officially authorized" by Circular No. 111 of December 4, 1918 (Appendix, *infra*, pp. 22–23); and that that Circular could not be applied to a separation which occurred before its effective date (R. 26–27. The court refused to hold that respondent had been guilty of laches, saying that until the decision of the Iowa Supreme Court he "had no basis for supposing that there was any doubt concerning his status as an honorably discharged soldier" (R. 28).

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[3] Under Selective Service Regulations (1917–18) Nos. 174–177, draftees were not finally accepted or rejected for military service until after examination at the mobilization camp.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the amended complaint stated a claim upon which relief could be granted.

2. In holding that an action seeking a mandatory injunction could be maintained against petitioners in the instant case.

3. In holding that respondent was entitled to an "Honorable Discharge from the Army."

4. In holding that the "Discharge from Draft" issued to respondent was not authorized by law.

5. In holding that it could interfere with the Secretary of War and The Adjutant General of the Army in a matter relating to the internal administration of the military service.

6. In failing to hold that respondent was barred by his laches from maintaining the instant suit.

7. In reversing the District Court.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals strikes down administrative action of the War Department of more than twenty-five years' standing, and, if not reversed, constitutes an unwarranted and burdensome intrusion into the realm of orderly military administration. It holds that an individual who was never accepted for service by the Army, who never wore the uniform, and who never even entrained to go to a mobilization camp, is entitled, as a matter of law, to an "Honorable

Discharge from the United States Army", on a parity with those who actually served, and in a more advantageous position than those who proceeded to the mobilization camp and were there rejected by the Army. It reaches that result on a misinterpretation of applicable War Department regulations, and in disregard of legal principles hitherto generally accepted. The decision below is in conflict with the ruling of the Court of Claims in *Palmer* v. *United States,* 72 C. Cls. 401, and fails moreover to give proper effect to decisions of this Court governing the scope of control by mandamus of the actions of executive officers.

1. The only statutory provision governing discharges which was in force at the date of Lamb's discharge was the 108th Article of War of the 1916 Code (Act of August 29, 1916, c. 418, 39 Stat. 619, 668, Appendix, *infra,* p. 20). This provided that no person lawfully inducted into the military service of the United States should be discharged without a certificate of discharge, and, further, that no enlisted man should be discharged prior to the expiration of his term of service except, *inter alia,* by order of the President or the Secretary of War. The statute did not prescribe the form, terms, or type of certificate, leaving these matters to the unfettered discretion of the civil heads of the military establishment; by its terms it granted the enlisted man

only the right to a certificate of discharge, not to any particular kind of certificate.

The court below, until its decision in the present case, had applied the well settled principle, deduced from the 108th Article of War of 1916 and its statutory predecessors,[4] that since the individual discharged from the military service was not entitled by law to any particular form of discharge, he could not, if dissatisfied with the type of certificate issued him, resort to the courts for relief (*Davis* v. *Woodring,* 111 F. 2d 523 (App. D. C.)); and the rule was the same whether he sought a writ of mandamus against the Secretary (*Davis* v. *Woodring, supra*) or whether he sued for back pay claimed to be due him (*Reid* v. *United States,* 161 Fed. 469 (S. D. N. Y., *per* Hough, D. J.), writ of error dismissed for want of jurisdiction, 211 U. S. 529; *Palmer* v. *United States,* 72 C. Cls. 401). Indeed, the law on this point had been deemed so firmly established—prior to the decision below—that new legislation was required when Congress desired to provide for review of the forms of discharge issued to

[4] Similar provisions appeared in earlier military codes. See AW 4 of the Code of 1874 (R. S. 1342); AW 11 of the Code of 1806 (Act of April 10, 1806, c. 20, 2 Stat. 359, 361); AW 13 of the Code of 1786 (Res. of May 31, 1786, 30 J. Cont. Cong. 316, 319), continued in force under the Constitution by Sec. 4 of the Act of Sept. 29, 1789, c. 25, 1 Stat. 95, 96.

The present 108th Article of War (Act of June 4, 1920, c. 227, 41 Stat. 759, 809; 10 U. S. C. 1580) is identical with the same article of the 1916 Code.

veterans of World War II. Section 301, Servicemen's Readjustment Act of 1944, Act of June 22, 1944, c. 268, 58 Stat. 284, 286-287, 38 U. S. C., Supp. IV, 693h.[5]

The court below was consequently in error when it held that it could control by mandatory injunction the character of discharge certificate issued to respondent. It also erred in holding that the Secretary of War was so far bound by his own regulations that, not having anticipated the Armistice nor the circumstance that the cessation of hostilities with Germany would result in a suspension of draft calls, he was bound to issue an Honorable Discharge from the Army to the respondent—who had never been accepted by the Army, who had never entrained for the mobilization rendezvous, and who is careful not to allege that he even proceeded as far as the railroad station.[6]

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[5] See the remarks of Mr. McCormack discussing Section 301 in the House (90 Cong. Rec. 4538): "We felt that some machinery should exist in the Navy Department and the War Department whereby veterans could have a review without the necessity of having their discharges corrected by specific acts of Congress."

[6] In the opinion of the Iowa Supreme Court in *Lamb* v. *Kroeger*, 233 Iowa 730, *supra*, a case tried on an agreed stipulation of facts, it appears that after respondent was appointed leader of the contingent, "the entire contingent went to the Hotel Dempsey, in Davenport, for lunch before entraining for Camp Dodge in Des Moines. While at lunch, a board member arrived and told them that they would not entrain for Camp Dodge because 'calls had been cancelled.' He also

But the law does not require that the Secretary of War have second sight; it holds that he is not bound by his own regulations (*Smith* v. *United States*, 24 C. Cls. 209; *Reid* v. *United States*, *supra*), so that he is free to deal with contingencies up to then unprovided for, as these may occur. It is to be noted that there is here no question of discrimination, nor any suggestion that respondent was treated differently from any other of some 56,000 inducted individuals whose nonacceptance for service was a consequence of the Armistice and the November 11, 1918, order cancelling further draft calls.

But the basic and all-permeating error of the court below was its assumption that the form of discharge issued to respondent was not authorized by the regulations in force at the date of his discharge (R. 26-27). The contrary is the fact.

As early as January 12, 1918, the War Department by Circular No. 651 (Appendix, *infra*, pp. 21-22) had provided that men who had reported for induction but who were rejected by the Army on any one of several grounds—and the Circular did not purport to restrict the grounds or reasons for which a given individual might be rejected—would not be given an Honorable Discharge, but would be issued a Discharge from Draft on Form

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stated that the members of the contingent were dismissed and that written notice of the cancellation would be mailed to each of them." 233 Iowa at 732.

638, A. G. O., together with pay until date of discharge.[7] This "Discharge from Draft" was all that was issued rejected men, even though prior to rejection they may have worn the uniform and performed the duties of a soldier. See *Davis* v. *Woodring,* 111 F. 2d 523 (App. D. C.). The "Honorable Discharge from the United States Army", with its recital that it is given the bearer "as a Testimonial of Honest and Faithful Service" (Appendix, *infra,* p. 25), was reserved for those who had actually been accepted for the Army at the mobilization rendezvous. Cf. *Bannister* v. *Soldiers Bonus Board,* 43 R. I. 346; *Zearing* v. *Johnson,* 10 Cal. App. 2d 654.[8]

The form of "Discharge for Draft", Form 638, A. G. O., was just as nonrestrictive as the Circular under which it was first authorized; it provided a space in which the reason for discharge was to be

[7] Under the terms of the Selective Draft Act of 1917, men were subject to military law from the time they were ordered to report for induction. *Franke* v. *Murray,* 248 Fed. 865 (C. C. A. 8); *Ex parte Bergdoll,* 274 Fed. 458 (D. Kan.); *United States ex rel. Feld* v. *Bullard,* 290 Fed. 704 (C. C. A. 2), certiorari denied, 262 U. S. 760; *United States* v. *McIntyre,* 4 F. 2d 823 (C. C. A. 9); *United States ex rel. Bergdoll* v. *Drum,* 107 F. 2d 897, certiorari denied, 310 U. S. 648. Under the Selective Training and Service Act of 1940, however, selectees were not subject to military law until they had been accepted and had taken the oath. *Billings* v. *Truesdell,* 321 U. S. 542.

[8] See also 40 Op. Att'y Gen., No. 103, holding that a person inducted by a local board on November 11, 1918, and discharged two hours later by the cancellation of all draft calls did not serve "on active duty."

inserted.[9] The same form could have been used without change for the discharge of men not accepted because of the Armistice and the attendant cancellation of draft calls. And as a matter of fact, all that Form 638–1 did was to print that reason, *viz.*, "by order of the President, dated November 11, 1918," which previously was required to be specially inserted in each instance. Indeed, proof that Form 638–1 did not depend for its validity on Circular No. 111 of December 4, 1918, appears on the very face of the "Discharge from Draft" actually issued respondent (Ex. E, R. 17), which shows that it was devised on "Nov. 19–18." All that Circular No. 111 did was to bring the change generally to the attention of the service; it did not signalize any departure from preexisting practice.

The decision below, therefore, not only encroaches on a field of military administration committed by law to the Secretary of War, but, once operating in that realm, proceeds to misapply the governing regulations. As this Court prophetically observed more than a century ago, "The interference of the courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and we are satisfied, that such

[9] The footnote on Form 638 reads, "This form will be used for discharge of aliens and alien enemies and of men rejected on account of physical unfitness, dependency, etc."

a power was never intended to be given to them." *Decatur* v. *Paulding*, 14 Pet. 497, 516, quoted with approval in *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 131–132.

2. The decision below is in conflict with *Palmer* v. *United States*, 72 C. Cls. 401. In that case, Palmer had enlisted in the Coast Guard, but before expiration of his enlistment had been discharged by his commanding officer contrary to the provisions of the applicable regulations. He thereupon brought suit in the Court of Claims for back pay for the unexpired period of his enlistment, alleging that the discharge was invalid because not effected as provided in the regulations. The court rejected his claim, saying (pp. 405–406):

> * * * Any regulation which the Secretary [of the Treasury] may have made could be set aside by him at any time and a new and different one promulgated * * *.
>
> * * * Nothing is expressed in the enlistment papers of plaintiff as to what reasons shall be sufficient for a discharge, nor is there anything that would indicate that he could only be discharged in accordance with certain regulations made by the Treasury Department. If the commanding officer of plaintiff failed to observe some regulation made by the Treasury in making the discharge, he could be called to account by the Secretary of the Treasury should that

> official see fit. But as long as no statute was violated by the manner of plaintiff's discharge, the fact that it was not in accordance with some Treasury directions can not, in our opinion, avail him.
>
> * * * It appears to be well settled not only by court decisions but by an unbroken practice in the military service which dates back to a time long preceding the organization of our Government that the courts will not interfere with or review the actions of proper officers in the military forces done in some administrative proceeding and not in conflict with any statute.

Even if it be conceded *arguendo* that respondent's discharge here involved a non-compliance with regulations, it was clearly not in conflict with any statute. Consequently, the action of the court below in undertaking to "interfere with or review the actions of proper officers in the military forces done in some administrative proceeding and not in conflict with any statute" is squarely opposed to the ruling of the Court of Claims in the *Palmer* case, *supra*.

3. The decision below fails to give proper effect to applicable decisions of this Court as to the scope of relief by injunction in the nature of mandamus.

It is well settled that such relief will be granted against administrative officials only when their duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent

to a positive command. *United States ex rel. Girard Co.* v. *Helvering,* 301 U. S. 540, 543; *Wilbur* v. *United States,* 281 U. S. 206, 218–219; *Litchfield* v. *Register and Receiver,* 9 Wall. 575, 577. Such, plainly, is not the situation here. The function of mandamus is to compel the performance of a ministerial duty; it may not be used "to direct the exercise of judgment or discretion in a particular way nor to direct the retraction or reversal of action already taken in the exercise of either." *Wilbur* v. *United States, supra,* at 218–219; *Miguel* v. *McCarl,* 291 U. S. 442, 451. Here the action of the Secretary of War was taken in the exercise of his judgment and discretion in a matter affecting the military service, and in respect of which unlimited discretion had been committed to him by Congress when it enacted the 108th Article of War (*infra,* p. 20). Consequently, mandamus would not be a proper remedy even if he had erred, absent a showing of arbitrariness or capriciousness—and no such showing is made here. *Ness* v. *Fisher,* 223 U. S. 683; *Alaska Smokeless Coal Co.* v. *Lane,* 250 U. S. 549; *Work* v. *Rives,* 267 U. S. 175; *Decatur* v. *Paulding,* 14 Pet. 497.

The court below applied in this case the same principles with respect to the scope of relief in the nature of mandamus that it held applicable in *Santa Fe Pacific R. Co.* v. *Ickes,* 153 F. 2d 305 (App. D. C.), certiorari granted June 10, 1946, *sub nom. Krug* v. *Santa Fe Pacific R. Co.,* Nos.

97–98, this Term. The same reasons that prompted this Court to review the decision of the court below in the *Santa Fe* case equally require a review of the decision in the present case.

4. Moreover, respondent's claim, whatever may have been its original merits, is now barred by laches; a delay of over a quarter of a century in resorting to judicial process is obviously unreasonable.[10] The doctrine of laches is based upon the public policy of discouraging stale claims. *Mackall* v. *Casilear,* 137 U. S. 556, 566. A neglected right, if neglected too long, will be treated as an abandoned right which no court will enforce. *Moran* v. *Horsky,* 178 U. S. 205, 208. Even a short delay has been held to constitute such laches as would bar an action for mandamus. Cf. *Arant* v. *Lane,* 249 U. S. 367. And the circumstance that the Iowa Supreme Court did not decide against respondent's claim for tax exemption until 1943, in *Lamb* v. *Kroeger,* 233 Iowa 730, is no excuse for his delay in bringing the present action. For that decision disclosed no fact hitherto unknown; it dealt solely with the construction of a state statute granting a tax exemption. The Iowa court reached that construction as a matter of state law, following a ruling of the Attorney General of Iowa made in 1922 (1922 A. G. O., 194;

[10] It may be significant in this connection that the review of discharges authorized by Section 301 of the Servicemen's Readjustment Act of 1944, 38 U. S. C., Supp. IV, 693h, is, by the terms of that provision, barred after fifteen years.

see 233 Iowa at 738–739), and in express disregard of what respondent's status might be as a matter of federal law. See 233 Iowa at 734, quoted *supra*, p. 4.

It is respondent's dissatisfaction with the Iowa court's interpretation of Iowa law which has occasioned the present proceeding. But the certificate issued to respondent in 1919 showed on its face that it was what it purported to be, a "Discharge from Draft" and not an "Honorable Discharge from the United States Army." If, as he now contends, the issuance of the certificate he received was in violation of existing regulations, it must follow that he was chargeable in 1918–1919 with the distinction between what he received and what he now contends was required by those regulations.[11] Certainly the distinction was created neither by the Iowa Supreme Court in 1943 nor by the Attorney General of Iowa in 1922. We submit, therefore, that there is no support whatever for the statement of the court below that until the Iowa decision respondent "had no basis for supposing that there was any doubt concerning his status as an honorably discharged soldier" (R. 28).

5. The decision below constitutes a serious and unwarranted invasion of the legitimate field of executive discretion, and a grave interference with orderly administration of the Army.

[11] We are advised that respondent is a practising attorney, that he was admitted to the Iowa bar in 1907, and that he became a member of the bar of this Court on October 11, 1910.

We are advised by the War Department that approximately 56,000 individuals received Discharges from Draft by reason of the President's order directing cancellation of all draft calls on November 11, 1918, and that according to the Department's actuarial records about 47,000 of those individuals are alive today. If the decision below remains undisturbed, the War Department would be bound to release 56,000 certificates upon demand by those now holding Discharges from Draft or by the next of kin of deceased holders of such discharges.

Moreover, the decision below places in an anomalous and inequitable position those who proceeded further in the induction process, but were finally rejected at mobilization camps and there received Discharges from Draft. We are advised that there were about 224,000 men in that group. The decision below opens wide to them the door to litigation seeking equal treatment with others who were discharged from the draft. Thus The Adjutant General would be subjected to a potential demand for the issuance of over a quarter of a million certificates of Honorable Discharge. His office estimates that each such demand would require at least two hours for a search of the records and the preparation and mailing of a certificate, or, in the aggregate, the full time of 280 clerks for one year simply to perform the routine administrative duties involved.

Finally, the decision below would place substantial financial burdens on both the United States and many of the States.[12] We do not believe that such administrative and financial burdens should be assumed in the absence of a review by this Court of the ruling below.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

JUNE 1946.

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[12] (a) Under Paragraph 8, Army Regulations 30–1840, dated October 9, 1944, only those holding honorable discharges are entitled to burial free of cost in national cemeteries. This privilege is denied holders of certificates of discharge from draft. The decision below creates potential liability in this respect as to all of the 280,000 recipients of certificates of discharge from draft still living, and might involve the question of reburial of those deceased.

(b) Under the provisions of Sec. 1406 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1151, each person separated from the service by an honorable discharge was entitled to a bonus of $60, regardless of his actual length of service. Those discharged from draft were not eligible for this discharge bonus. Although the average service of all such dischargees was only about 5 days, the decision below would create a potential liability in this respect amounting to $16,800,000.

(c) The statutes of many states extend tax exemptions, bonus payments and other benefits to those honorably discharged, but not to those holding certificates of discharge from draft. The decision below would, by enlarging the number of eligibles, greatly increase the impact of such benefits on state fiscal structures.

APPENDIX

1. The 108th Article of War, as enacted by the Act of August 29, 1916, c. 418, 39 Stat. 619, 668, is as follows:

> ART. 108: Soldiers—Separations from the Service—No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court martial.

2. Paragraph 150 of the Army Regulations of 1913, corrected to April 15, 1917, was as follows:

> 150. Blank forms for discharge and final statements will be furnished by the Adjutant General's Department and will be retained in the personal custody of company commanders. Discharge certificates will be used in the discharge of enlisted men and for no other purpose, and will be of three classes: For honorable discharge, for discharge, and for dishonorable discharge.
>
> They will be used as follows:
>
> 1. The blank for honorable discharge, when the soldier's conduct has been such as

to warrant his reenlistment and his service has been honest and faithful.

2. The blank for dishonorable discharge, for dishonorable discharge by sentence of a court martial or a military commission.

3. The blank for discharge when the soldier is discharged except as specified under sections 1 and 2 of this paragraph (C. A. R. Nos. 14 and 34).

3. War Department Circular No. 651, dated January 12, 1918, reads in pertinent part as follows:

PREPARATION AND DISPOSITION OF THE INITIAL RECORDS OF MEN INDUCTED INTO THE NATIONAL ARMY

* * * * *

3. *Records of rejected men:*

The following individual records of enlisted men rejected for military service at place of mobilization, will be forwarded to the Adjutant General of the Army, as soon as practicable.

(a) Report of Physical Examination, Form No. 1010 P. M. G. O.

(b) *A true copy* of the certificate of discharge from draft, Form No. 638, A. G. O.

4. *Disposition of rejected men:*

All men rejected for military service at place of mobilization will be furnished the following:

(a) A discharge from draft on Form No. 638, A. G. O.

(b) Final statements. (The rejected man is entitled to pay from date of reporting for military duty to date of discharge, less pay for any time absent without leave, or absent in desertion, or any amount due United States for reward paid for apprehension and delivery of deserter, etc.,

and to travel allowances at the rate of 3½ cents per mile from place of discharge to place of reporting for military duty.

* * * * *

By order of the Secretary of War:

JOHN BIDDLE,
Major General, Acting Chief of Staff.

4. The text of War Department Circular No. 111, dated December 4, 1918, is as follows:

DISCHARGE FROM THE DRAFT UNDER THE PRESIDENT'S ORDER OF NOVEMBER 11, 1918

1. Under the President's order of November 11, 1918, all registrants inducted by Local Boards, but who had not arrived at a mobilization camp or station were ordered discharged.

2. In order that all records of such men may be properly completed, the following instructions will be complied with:

a. The following are the forms and records prepared by Local Boards and forwarded to the commanders of the Mobilization camps or stations concerned, for the discharge of the men designated in paragraph 1:

(1) Double Post Card, Form No. 1029, A and B, P. M. G. O., Original, no copies.

(2) Final Statement of Accounts, Form No. 2017, P. M. G. O., Original and two (2) copies.

(3) Physical Examination, Form No. 1010, P. M. G. O., Original and one (1) copy.

(4) Registration Card, Form No. 1, P. M. G. O., One (1) Form.

b. Immediately upon receipt of these records by the camp commanders concerned,

the procedure indicated below will be followed:

(1) Form No. 1029 A and B will be completed as a rejection "Account Cancellation of Call under President's order of November 11, 1918," and forwarded to the appropriate local Board and the Provost Marshal General in the usual manner.

(2) The Original of Form No. 1010, P. M. G. O., and Form No. 2017, P. M. G. O., will be forwarded with Form No. 1, P. M. G. O., to the Adjutant General of the Army.

(3) A copy of Form No. 1010, P. M. G. O., will be transmitted to the camp surgeon.

(4) A discharge certificate, on a new blank form (Form No. 638–1, A. G. O.), will be made out by the camp commander and transmitted with the two remaining Forms Nos. 2017, P. M. G. O., to the disbursing quartermaster at the camp or station.

(5) The disbursing officer will use the two copies of Form No. 2017, P. M. G. O., as a statement of final account of the man concerned and will issue a check in settlement thereof in the same manner as in the settlement of final statements.

(6) The discharge certificate will be indorsed by the disbursing officer as to final settlement and will then be mailed, with check for amount due, to the man concerned at the address given.

(324.71, A. G. O.)

BY ORDER OF THE SECRETARY OF WAR:

PEYTON C. MARCH,
General, Chief of Staff.

OFFICIAL:

P. C. HARRIS,
The Adjutant General.

5. Following is the front of Form 638, A. G. O., edition of March 16, 1918:

DISCHARGE FROM DRAFT

[Seal]

TO ALL WHOM IT MAY CONCERN

This is to Certify, That_____ _____ is hereby DISCHARGED from the military service of the UNITED STATES by reason of_____ _____ _____

Said _____ was inducted into the service from the jurisdiction of the *Local Board for_____ _____, *Adjutant General, State of_____, on the _____ day of _____, 191 .

While this certificate discharges the person named herein from his present obligation to serve in the Army, it does not operate as a permanent bar to his subsequent entrance into the military service. Under Section 5 of the Act of May 18, 1917, all registered persons remain subject to the draft unless exempted or excused as in that Act provided. Therefore, this discharge does not excuse the holder from obedience to the process of Exemption Boards.

Given at_____, this _____ day of _____, 191 .

By *{command / order} of _____ _____

Adjutant.

*Strike out words not applicable.

NOTE.—This form will be used for discharge of aliens and alien enemies and of men rejected on account of physical unfitness, dependency, etc.

Form No. 638, A. G. O.
Ed. Mar. 6-18-100,000.

6. The form of an Honorable Discharge from the Army, in force at the end of 1918, was as follows:

HONORABLE DISCHARGE FROM THE UNITED STATES ARMY

[Seal]

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That*_____
†_____
THE UNITED STATES ARMY, as a Testimonial of Honest and Faithful Service, is hereby Honorably Discharged from the military service of the United States by reason of ‡_____

Said _____ was born in _____, in the State of_____ When enlisted he was _____ years of age and by occupation a _____ He had _____ eyes, _____ hair, _____ complexion, and was _____ feet _____ inches in height.

Given under my hand at _____ this _____ day of _____, one thousand nine hundred and _____.

_____
_____
Commanding.

Form No. 525, A. G. O.
Oct. 9–18

*Insert name, Christian name first: e. g., "John Doe."

†Insert Army serial number, grade, company and regiment or arm or corps or department: e. g., "1,620,302"; "Corporal, Company A, 1st Infantry"; "Sergeant, Quartermaster Corps"; "Sergeant, First Class, Medical Department."

‡If discharged prior to expiration of service, give number, date, and source of order or full description of authority therefor.

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